

### § 3.1001

### 38 CFR Ch. I (7–1–15 Edition)

and burial (see paragraph (a)(5) of this section).

(g) *Veterans educational assistance.* Educational assistance allowance under 38 U.S.C. chapters 30, 32, or 34, and 10 U.S.C. chapter 1606 remaining due and unpaid at the date of the veteran's death is payable under the provisions of this section.

(Authority: 38 U.S.C. 5121)

(h) *Clothing allowance.* Clothing allowance under 38 U.S.C. 1162 remaining due and unpaid at the date of the veteran's death is payable under the provisions of this section.

(i) *Active service pay.* Benefits awarded under this section do not include compensation or pension benefits for any period for which the veteran received active service pay.

(Authority: 38 U.S.C. 5304(c))

[26 FR 1608, Feb. 24, 1961, as amended at 27 FR 11892, Dec. 1, 1962; 30 FR 11389, Sept. 8, 1965; 31 FR 4790, Mar. 22, 1966; 34 FR 840, Jan. 18, 1969; 39 FR 15126, May 1, 1974; 56 FR 18733, Apr. 24, 1991; 56 FR 24239, May 29, 1991; 61 FR 67950, Dec. 26, 1996; 62 FR 5529, Feb. 6, 1997; 62 FR 35423, July 1, 1997; 67 FR 65708, Oct. 28, 2002; 71 FR 78369, Dec. 29, 2006; 80 FR 18117, Apr. 3, 2015]

#### § 3.1001 Hospitalized competent veterans.

The provisions of this section apply only to the payment of amounts actually withheld on a running award under § 3.551(b) which are payable in a lump sum after the veteran's death.

(a) *Basic entitlement.* Where an award of disability pension for a competent veteran without dependents was reduced because of hospital treatment or institutional or domiciliary care by the Department of Veterans Affairs and the veteran dies while receiving such treatment or care or before payment of amounts withheld, the lump sum is payable to the living person first listed as follows:

(1) The veteran's spouse, as defined in § 3.1000(d)(1);

(2) The veteran's children (in equal shares), as defined in § 3.57 but without regard to their age or marital status;

(3) The veteran's dependent parents (in equal shares), or the surviving dependent parent, as defined in § 3.1000(d)(3);

(4) In all other cases, only so much of the lump sum may be paid as may be necessary to reimburse a person who bore the expenses of last sickness or burial. (See § 3.1002.)

(b) *Claim.* Applications must be filed with the Department of Veterans Affairs within 5 years after the death of the veteran. If, however, any person otherwise entitled is under legal disability at the time of the veteran's death, the 5-year period will run from the date of termination or removal of the legal disability.

(1) There is no time limit on the retroactive period of an award or for furnishing evidence.

(2) Failure to file timely claim, or a waiver of rights, by a preferred dependent will not serve to vest title in a person in a lower class or a claimant for reimbursement; neither will such failure or waiver by a person or persons in a joint class serve to increase the amount payable to another or others in the class.

(c) *Lump sum withheld after discharge from institution.* The provisions of paragraphs (a) and (b) of this section will apply in the event of the death of any veteran prior to receiving a lump sum which was withheld because treatment or care was terminated against medical advice or as the result of disciplinary action.

(Authority: 38 U.S.C. 5503)

[26 FR 1609, Feb. 24, 1961, as amended at 27 FR 5539, June 12, 1962; 27 FR 8177, Aug. 16, 1962; 27 FR 11893, Dec. 1, 1962; 39 FR 15126, May 1, 1974]

#### § 3.1002 Political subdivisions of United States.

No part of any accrued benefits will be used to reimburse any political subdivision of the United States for expenses incurred in the last sickness or burial of any beneficiary. (See § 3.1(o)).

(Authority: 38 U.S.C. 5121(b) and 5502(d))

[39 FR 15126, May 1, 1974]

#### § 3.1003 Returned and canceled checks.

Where the payee of a check for benefits has died prior to negotiating the check, the check shall be returned to the issuing office and canceled.